BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

PATRICIA ALLENDER	)	
Claimant	)	
VS.	)	
	)	Docket No. 268,827
DAV THRIFT STORES	)	
Respondent	)	
AND	)	
	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier appealed the October 11, 2001 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

This is a claim for an August 18, 2001 accident and resulting back injury. On that date, claimant injured her back while helping her supervisor lift a coffee table.

At the October 11, 2001 preliminary hearing, respondent and its insurance carrier argued that claimant was generally forbidden from lifting greater than 15 pounds and specifically forbidden from lifting the coffee table in question. Accordingly, respondent and its insurance carrier argued the accident did not arise in the course and scope of employment. Judge Frobish disagreed and in the October 11, 2001 Order the Judge granted claimant's request for preliminary hearing benefits.

On appeal, respondent and its insurance carrier request the Board to reverse the October 11, 2001 Order and deny claimant's request for benefits.

Conversely, claimant requests the Board to affirm the preliminary hearing Order.

The only issue before the Board on this review is whether claimant's accidental injury arose in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Board finds and concludes:

1. The preliminary hearing Order should be affirmed.

2. Claimant worked for respondent for approximately 12½ years as a cashier. On August 18, 2001, an elderly woman purchased a coffee table and requested assistance in loading the table in her car. Claimant believed the table weighed approximately 30 pounds and realized that she could not lift the table without violating a 15-pound lifting restriction that had been placed on her due to an October 1997 back injury. Thus, claimant summoned her supervisor, Erma Edge, for help. Claimant and Ms. Edge then lifted the table, causing claimant to experience back pain and discomfort.

3. Both claimant and Ms. Edge testified that neither believed helping lift the coffee table would violate claimant's 15-pound lifting restriction.

4. Respondent and its insurance carrier contend that at the time of the incident claimant was forbidden from helping lift the coffee table. But Ms. Edge testified that she did not specifically prohibit claimant from helping lift the table. Ms. Edge testified, in part:

> Q. (Mr. Farris) Ma'am, what were the exact words you used?
>
> A. (Ms. Edge) I said, Pat, you can't do this. And she said, I can't let you lift it by yourself.
>
> Q. So you didn't actually tell her, no, under your direction and control, she is not to lift the table; did you?
>
> A. Well --
>
> Q. Yes or no.
>
> A. No.[1]

After considering the entire record compiled to date, the Board finds claimant was not forbidden from helping Ms. Edge lift the coffee table.

5. Respondent and its insurance carrier also contend respondent had previously advised claimant to abide by the 15-pound lifting restriction and, therefore, claimant was injured by performing forbidden work. They argue this claim should be denied on the

---

[1] Transcript of Preliminary Hearing, October 11, 2001, at p. 17.

principles set forth in Hoover[2] in which the Court held that employees are not acting in the course of their employment when they perform forbidden work. The Court stated, in part:

> If an employee is performing work which has been forbidden, as distinguished from doing his work in a forbidden manner, he is not acting in the course of his employment.[3]

6. Claimant was performing her cashier duties at the time of the August 18, 2001 lifting incident. As a cashier, claimant was not prohibited from lifting, nor prohibited from lifting the particular table in question. Accordingly, claimant was not injured by performing forbidden work. The principles set forth in Hoover do not preclude claimant from recovering workers compensation benefits in this claim.

7. The Board finds and concludes that claimant's August 18, 2001 accidental injury arose out of and in the course of employment with respondent.

WHEREFORE, the Board affirms the October 11, 2001 preliminary hearing Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of November 2001.

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
David Menghini, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

[2] Hoover v. Ehrsam Company, 218 Kan. 662, 544 P.2d 1366 (1976).

[3] Hoover, syl. 2.